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September 14, 2006

Councilmember Peter Steinbrueck
City Hall, 600 Fourth Avenue
P.O. Box 94749
Seattle, WA 98124

RE: Request for Planning Commission Review of Adult Cabaret Proposed Legislation

Dear Councilmember Steinbrueck:

On April 14, 2006 the Seattle Planning Commission was asked to assist the Urban Development and Planning committee in its review of proposed legislation (C.B. 115522) to amend the Seattle Municipal Land Use Code to regulate adult cabarets. We appreciate that City Council has been presented with a difficult task and the Planning Commission is pleased to offer its expertise in assisting the Council. Attached you will find our report containing our observations and responses to your questions.

The Planning Commission is an independent citizen volunteer advisory body that provides advice and recommendations to City officials on broad planning goals, policies and plans for the physical development of Seattle. The Planning Commission is made up of dedicated individuals who bring their collective knowledge and expertise to bear in creating their advice. This collective knowledge includes background in land use law, neighborhood planning, environmental impact analysis, economic and community development, land use and transportation planning, affordable housing, architecture, and historic preservation among others. Much of this experience has come to bear in the Commission's review of C.B. 115522. We hope you find our analysis helpful in your decision-making process.

The Commission's analysis included thorough review of the legislation, the Director's Report, briefings from City staff, independent information gathering, review of reports, and researching the regulatory practices of other cities. We received reports from stakeholder groups and have enclosed these reports for your information in the spirit of full transparency. As is our normal practice, the Commission also took public comment on this matter at our Commission meeting on May 11, 2006 and August 24, 2006.

Based on the information we have reviewed, the Planning Commission does not endorse the Mayor's proposal as the best way to regulate adult cabarets in Seattle. There is no "best way" per se; it is a matter of local prerogative. Nevertheless, we do not believe that a compelling planning-based argument has been made to change the existing policy. Adult cabarets are currently allowed to locate city-wide in all commercial and industrial zones except for NC1 zones and the Duwamish Manufacturing and Industrial Center. City Council may want to consider other ways to regulate this land use, such as applying buffer zones to separate adult cabarets from sensitive uses or establish a conditional use permit process, for example.

We recognize that regulating adult entertainment uses is a very difficult challenge and requires a delicate balance between what is legally permissible and what is politically possible. In that regard, we want to acknowledge the careful consideration and efforts by the Department of Planning and Development and the Mayor's office. Their staff met with the Commission and provided us with significant assistance. In the end, despite using similar background information, we simply arrive at a different conclusion. The Planning Commission thanks you for this opportunity to assist you in your work. We remain ready to provide you with additional thoughts and information should you need it.

Sincerely,

A handwritten signature in black ink, reading "Jerry Finrow". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jerry Finrow, Chair
Seattle Planning Commission

cc:
Mayor Nickels
Seattle City Council
Diane Sugimura, John Rahaim, John Skelton, DPD
Martha Lester, Council Central Staff

**SEATTLE PLANNING COMMISSION REPORT
TO SEATTLE CITY COUNCIL URBAN PLANNING AND DEVELOPMENT COMMITTEE
ON THE MAYOR'S PROPOSED ADULT CABARET LEGISLATION**

The Planning Commission's review of the Mayor's proposed adult cabaret legislation focused on land use regulations pertaining specifically to 'adult cabarets' and does not address regulation on the current legally operating clubs or on conduct and operating restrictions for adult cabarets. Adult cabarets are just one of many traditionally regulated adult entertainment uses. Other uses typically regulated by municipalities include adult motion picture theaters (triple-x movie theaters), adult panorams (peepshows), adult video stores, adult book stores and other commercial uses with an adult character. The City of Seattle Municipal Code currently has specific regulations for adult motion picture theaters and adult panorams.

Planning Commission General Observations

- Adult cabarets are currently regulated in the Seattle Municipal Code as performing arts theaters. It is our understanding that the City is in legal compliance now that the moratorium on issuing new permits has been struck down by the courts and allowed to expire. From a legal standpoint a change in the existing regulatory approach is not required. If current regulations remain in place, adult cabarets would continue to be regulated as performing art theaters and allowed in all commercial and industrial zones throughout the city, except in NC1 zones and the Duwamish Manufacturing and Industrial Center (MIC).
- It is our understanding that there are no applications pending for an adult entertainment premise license. Current legal and economic conditions appear to have suppressed demand for opening new adult cabarets by restricting the service of alcohol and the possible application of new conduct and operating requirements within the establishments. Currently, there are four adult cabarets in Seattle; one in Lake City, two in Ballard, and one Downtown. A ballot referendum in November, if approved by voters, would overturn the City's recently adopted operating restrictions on adult cabarets. Some have speculated that if the referendum is passed by the voters, there may be an increased demand for licenses. Therefore it is prudent to explore possible changes to the City's existing land use regulations now.
- To our knowledge, there have been no local studies conducted by (or solicited by) the City to quantify actual statistics relating to the perceived nuisances, crime, or decreased property values associated with adult uses, including adult cabarets.¹ Information used to determine City policy is based upon information gathered by other cities and on anecdotal local sources. It is common for cities to look to other municipalities for best practices in developing land use regulations and DPD and the Commission reviewed information from various cities such as New York City, Chicago, Los Angeles, Austin, Indianapolis, and Phoenix (see list of references at the end of this document).
- If a local study was conducted by the City and it revealed that there were no, or few, quantifiable negative impacts produced by adult cabarets in Seattle there would be no reason to restrict their location. In the case that there are quantifiable negative impacts, the policy choice should then be

¹ A local study, entitled *Economic Impact of Three Adult-Oriented Clubs in Seattle* (Washington, Allman & Peterson Economics, LLC, July 2006), was prepared at the request of Déjà Vu Showgirls and is attached.

based more on weighing the impact of adult cabarets and their potential impact on achieving the City's other goals, including the preservation of industrial land for industrial uses or the development of vibrant mixed-use districts including residences, among many other goals.

- If, however, a local study prepared or commissioned by the City were to indicate that there are quantifiable negative impacts, then it seems that policing and code enforcement would be the most important issue to address in deciding whether it is better to allow adult cabarets in just one district or allow them throughout the city. The Commission has no expertise in policing; however it would seem to be important to seek the expertise of the Seattle Police Department and code enforcement agencies to determine whether restricting adult cabarets to one district versus allowing them throughout the city provides the agencies with the best way to monitor these uses. Many cities have policies in place to disperse adult entertainment uses, rather than allow them to concentrate. The studies note that although specific properties may be negatively affected, the impact is spread out rather than concentrated in one area.² The Director's Report points out that several cities have found that spreading out the uses helps in lowering overall impact to the city.³
- As pointed out in your April letter to the Planning Commission; the Georgetown, Beacon Hill, and South Park neighborhoods have voiced objections to the Mayor's proposal. We understand that some of this concern is based on the perception that these neighborhoods have become the "dumping ground" for uses not wanted in other parts of the city. These concerns are certainly important from a policy perspective, however, the Commission's charge and its work is focused on the planning aspects of the proposal. We understand that there was also community opposition when alternate proposals were put forth regarding regulation of these uses 17 years ago, just after the moratorium was put into place. In fact, community opposition is a matter of course for the siting of adult entertainment uses nationwide. Almost every community struggles with zoning regulation of adult entertainment uses.

In Response to Questions from the Urban Development and Planning Committee

- 1) Either endorse the Mayor's proposal as the best way to regulate adult cabarets or recommend further study or specific changes to the proposal. City Council is interested in hearing if the Commission has any other ideas to be considered as the Council continues their deliberations.**

The Planning Commission does not endorse the Mayor's proposal as the 'best way' to regulate adult cabarets in the city of Seattle. We understand that advantages may be gained isolating this particular use to a specified area – locating the use far from almost every residential area of the city, grouping them together for efficient policing and code enforcement, and separating them from other adult entertainment uses. However, we also recognize disadvantages, which include – impacts on the industrial uses in the area, the proximity to two neighborhoods (Beacon Hill and Georgetown) which may or may not be negatively impacted by the uses, and grouping adult cabarets together may create a potential for exacerbating negative impacts. Many studies have noted that when grouping adult uses together (as many as three or more), there can be a compound affect on the negative impacts to surrounding areas.⁴ Based on the experiences of other

² Adult Entertainment Study Summary, New York City Department of City Planning, 1994, (www.nyc.gov/html/dcp/html/pub/adultent.shtml).

³ Adult Cabarets in Seattle, Director's Report, City of Seattle Department of Planning and Development, March 28, 2006, page 9.

⁴ Adult Entertainment Study Summary, New York City Department of City Planning, 1994, (www.nyc.gov/html/dcp/html/pub/adultent.shtml).

cities it is clear that there is no 'best way' when siting uses that are perceived to have negative impacts on communities.⁵

Based on our review, we would recommend that the current city-wide dispersement policy remain in place allowing adult cabarets in all commercial and industrial zones, except in NC1 zones and the Duwamish MIC. The use of buffers and other regulatory tools are used by other municipalities.⁶ It seems appropriate to consider those tools for Seattle in conjunction with our current regulations. With regard to buffers, it would be necessary to determine the optimal size. The buffer would need to be large enough to be effective in protecting nearby sensitive uses, yet still allow for legally defensible location opportunities. In addition, we question whether all the listed uses in the Mayor's proposal require the same buffer distance and whether some of the listed uses warrant a buffer at all. For instance, we do not believe that light rail stations need to be buffered from adult cabarets.

We have included a table highlighting separation requirements (in feet) for adult uses in other cities. You will note that other cities have applied buffers between adult uses as well as between the adult uses and other sensitive uses.

<u>Municipality</u>	From Other Adult Uses	From Residential Uses	From a Park, School or Day Care Facility	From a House of Worship
Seattle	N/A	N/A	300	N/A
<u>Local</u>				
Bellevue	660	660	660	660
Renton ¹	N/A	1,000	1,000	1,000
Spokane	750	750	750	750
Tacoma	2,500	2,000	1,000	1,000
Tukwila	1,000	1,000	.5 mile from schools 1000 from parks	1,000
<u>National</u>				
Atlanta ²	1,000*	500	1,000	1,000
Denver ³	1,000*	500	500	500
Minneapolis ⁴	N/A	1,000	500	500
New York City ⁵	500	500	500	500
Phoenix	1,000	500	500	N/A
Portland	N/A	N/A	N/A	N/A
San Diego ⁶	1,000	1,000	1,000	1,000

Notes

- * Both Atlanta and Denver require distance from any two other such businesses.
- 1. Renton allows adult uses to operate within industrial and commercial zones, provided that such businesses are in compliance with separation requirements. Within certain, pre-designated industrial and commercial areas however, adults uses do not have to comply with separation requirements.

⁵ The book entitled "*everything you always wanted to know about regulating sex businesses*" (Eric Damian Kelly and Connie Cooper, American Planning Association, December 2000) discusses the many approaches throughout the United States. Chapter 4 in particular highlights these approaches.

⁶ "*everything you always wanted to know about regulating sex businesses*", Eric Damian Kelly and Connie Cooper, American Planning Association, December 2000, page 76.

2. Atlanta requires a separation distance of 2,000 feet from parks, schools, daycare centers, and churches if the establishment serves alcohol.
3. In Denver, a 125-foot separation distance is also required from a pedestrian or transit mall.
4. Minneapolis prohibits adult use on any property with its main public entrance on Nicollet (the transit mall through downtown Minneapolis).
5. New York City does not permit an adult use in zoning districts that permit residential either by right or special permit. Parks are not a protected use.
6. San Diego also requires separation from social service institutions.

Sources:

- *Everything you always wanted to know about regulating sex businesses*, Eric Damian Kelly and Connie Cooper, American Planning Association, December 2000.
- Cities of Bellevue, Renton, Seattle, Spokane, Tacoma, and Tukwila

As mentioned above, other jurisdictions have studied the effects of adult entertainment uses and have consistently found that these uses do have negative secondary impacts and that a relationship exists between the concentration of adult uses and incidence of crime. Addressing these problems by isolating the use to a zone in an industrial area would likely not solve negative secondary impacts. Many of the problems associated with adult cabarets are better addressed through enforcement of the operating rules that regulate such uses. We recommend looking to the expertise of the Seattle Police Department for information on the best way to most effectively police adult cabarets and to the Department of Planning and Development for the best way to enforce code regulations.

2) Assess the model proposed by the Mayor, where new adult cabarets would be limited to one area of the city, versus a model where adult cabarets would be allowed city-wide but required to be at least a certain distance from specified uses.

The model proposed by the Mayor recommends that adult cabarets be regulated as a specific designation in the Seattle Land Use Code and that those uses be allowed only within a designated area in the Duwamish MIC. In assessing this proposal the Planning Commission considered the potential impacts of concentration of adult cabarets to the district itself and surrounding/adjacent areas; impacts to industrially zoned land (allowing additional non-industrial uses) and whether the Mayor's proposal has a rational planning basis.

Under existing regulations, adult cabarets are allowed in all commercial and industrial zones throughout the city except for NC1 zones and the Duwamish MIC. Based on the material reviewed, we do not believe that a compelling planning-based argument has been made to change the existing policy from the current city-wide dispersal of this land use to limiting it to the Duwamish area. Although we see some merit to confining adult cabarets to a limited area, we do not feel that quantitative Seattle-based evidence necessary to make that decision has been developed. In addition, our research has led us to believe that dispersing adult entertainment uses has been more successful in other cities in handling the potential negative impacts that these uses might have. Based on the experience of these other cities, it appears that dispersion lowers the impact of adult uses overall.⁷ We do recognize that every city has a unique combination of land use laws, operating regulations, and liquor laws that affect how adult uses - or nightlife and drinking establishments, for that matter - impact a city's neighborhoods. There are merits to both models; however without quantitative, Seattle-specific information it would be difficult to definitively say that one model is superior to another. Such Seattle-specific information might include a review of police complaints

⁷ *"everything you always wanted to know about regulating sex businesses"*, Eric Damian Kelly and Connie Cooper, American Planning Association, December 2000, page 66.

regarding Seattle's existing adult cabarets in context of other nightlife locations; a comparison of Seattle's operating rules, liquor laws, and those of surrounding jurisdictions; and an analysis of concentrating adult cabarets within the context of Seattle's unique combination of land use regulations and operating rules as well as liquor laws.

The Mayor's proposal intends to minimize impacts on residential neighborhoods and it would indeed isolate future adult cabarets as far from most residential areas as possible while still allowing the use in the city, as legally required. One or two adult cabarets in the district would not appear to harm surrounding neighborhoods. Problems could occur, however, if numerous cabarets were to locate in the area and become the locus of unwelcome activity that can be the result of a concentration of adult uses.

The Planning Commission has been a strong advocate for reserving industrial land for industrial uses. Although it is incremental, the allowance of yet another non-industrial use in the area puts increased pressure on land and continues the trend in the Duwamish away from traditional industrial uses. The area is already under significant pressure from increasing land prices, adding another allowed use could end up increasing property values even further.

The Director's Report provides information on studies and examples from cities around the country that detail how adult entertainment uses have been handled. Those examples do not point to a clear, compelling direction for Seattle. The Report also points out that specific study of Seattle's situation has not been done. The Report then recommends a specific course of action (limiting adult cabarets to a specific zone) by stating that removing the potential for adult cabarets in or near neighborhood commercial areas and downtown residential areas the City can minimize the anticipated adverse impacts to residents of Seattle. That conclusion is not entirely supported by the background information provided.

3) Provide opinion on whether the Mayor's proposed boundaries of the proposed permitted area and the requirement that adult cabarets be 1000 feet from specified uses adequately protect nearby businesses and surrounding residential areas (particularly Georgetown, South Park, and Beacon Hill) from undesirable impacts.

The Planning Commission reiterates that it does not support the creation of an adult cabaret zone as the best way to regulate this use. The question remains whether it is desirable to concentrate adult cabarets in one area or to disperse them. If the Council determines that it is desirable to concentrate adult cabarets in one area, then the Planning Commission offers the following observations.

As to whether the proposed district is in the best location - in a city as densely settled as Seattle, it is difficult to find a location for most uses that does not impact some nearby use. In the Mayor's proposal, the district appears to have been located as far from sensitive uses as possible and still be within the City limits. However, there is an issue with the proximity of the district to the school district headquarters that puts part of the district off limits as potential sites for adult cabarets thereby reducing the effective area of district. In addition, there are some nearby residential areas that are unhappy with the proximity of the district to their neighborhood - the district may be far from most neighborhoods, but not from every neighborhood, and political decisions will need to be made as to which neighborhoods will be affected if a district model is selected.

Buffers within the zone appear to be an unnecessary overlay. First, questions need to be asked:

What is being buffered? The district itself already acts as a buffer. This permitted zone was chosen presumably because it is already isolated from sensitive uses, so it does not appear that a 1000'

buffer would make it any less impactful on surrounding uses. The permitted zone area is already 1000' from almost every sensitive or habitable parcel in South Park, Georgetown, or Beacon Hill except for an area in the northern portion of the zone that is within 1000' of the Seattle School District headquarters. Perhaps the district boundary should be altered to eliminate this area near the school district headquarters. Applying buffers within the zone would only limit further potential locations and could create a situation in which the district may become too small to be legally defensible.

Is 1000' enough to protect sensitive uses from an adult cabaret? It depends on what is meant to be achieved. If the buffer is meant to isolate the adult cabaret from a sensitive use to limit visual infringement or the speculated unwelcome or criminal activity – then signage, design control, and policing will do more to achieve those goals. Our review of research indicates that 1000' appears to be a commonly accepted distance used elsewhere in the country. Without doing research specific to Seattle, 1000' buffers would seem to be satisfactory. As mentioned above, however, buffers seem to be unnecessary within the district – and in fact, may be problematic by overly limiting locational opportunities for adult cabarets within the district.

With regard to whether this district is large enough, the Planning Commission is not in a position to make a definitive recommendation. It is our understanding that research has been done to determine that the permitted area has sufficient potential locations for adult cabarets to locate and therefore is legally defensible. Based on the experience of other cities we can conclude that the larger the permitted area the less concentration of uses. One way to ensure dispersal would be to require buffers between cabarets and not just between cabarets and sensitive uses. This would need to be researched and may limit possible locations – a study of the area would need to be done to understand the impact and whether the district is large enough to accommodate such buffers.

4) Provide opinion on whether the Mayor's proposal will result in a "red light district" concentration of adult cabarets, or will new adult cabarets likely disperse within the permitted area.

Webster's Dictionary defines a "red-light district" as a neighborhood where many brothels (houses of prostitution) occur. More generally, the term conjures up the image of a limited area where many different adult entertainment establishments are concentrated. Limiting adult cabarets to the proposed zone may result in other adult entertainment uses locating in that area; however, based on the information we have reviewed, the Commission cannot determine if in fact this would be the result.

As mentioned earlier, current economic and legal conditions do not appear to support the speculation that this area will become the location of dozens of adult cabarets. However, if restrictions on conduct restrictions do not go in to effect in November based on the public vote there may be some additional demand for adult cabaret permits.

It is possible that an adult cabaret district could provide the most efficient arrangement for policing and code enforcement as well as the best option to isolate negative impacts in an industrial corner of the city, as far away as is practical from residential areas and still within the City's legal requirements to provide a location for adult cabarets.

Whether a "red light" district forms or not, depends on many things including future economic and legal conditions, policing, and rule enforcement. The Seattle Police Department and Department of Planning

and Development should be consulted to ascertain their opinion on whether a district would be easier to monitor rather than having adult cabarets located in several different business districts around the city.

List of References

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